California Commission
on
Health and Safety and Workers' Compensation

MINUTES OF MEETING

Meeting Day and Date: Thursday, October 12, 1995

Meeting Location: State Office Building
1350 Front Street
Auditorium-B109
San Diego, CA 92101-3690

Commission Members Present:

Chairman Robert B. Steinberg
Commissioner Robert H. Alvarado
Commissioner James J. Hlawek
Commissioner Gerald O'Hara
Commissioner Tom Rankin
Commissioner Kristen Schwenkmeyer
Commissioner Gregory Vach

Commission Members Absent:

Commissioner Leonard McLeod

Commission staff:

Christine Baker, Executive Officer of the Commission

Welcome and Announcements

The meeting was called to order at 10:00 am by Chairman Robert B. Steinberg.

Adoption of Minutes

Chairman Steinberg asked for a motion regarding the minutes of the Commission meeting on September 14, 1995, which had been submitted for approval by Christine Baker. Commissioner Rankin moved that the minutes be adopted, several commissioners seconded the motion, and the motion passed unanimously.

Special Reports from the Workers' Compensation Community

Chairman Steinberg announced that the Commission would hear special reports from three gentlemen with a lot of experience in the Workers' Compensation field.

Proposed Pure Rate Premium Filing: Background

Chairman Steinberg introduced David M. Bellusci, Senior Vice President and Chief Actuary for the Workers' Compensation Insurance Rating Bureau (WCIRB).

Mr. Bellusci distributed handouts which were also displayed on an overhead projector and explained that he would give an overview of the WCIRB, discuss the rating setting process in general and then go over the proposed 18.7% increase in the pure premium rate.

The authority for the WCIRB comes from Insurance Code Section 11750.3. The WCIRB is a non profit association of insurers, licensed by the Insurance Commission and funded through insurer assessments proportionate to premium volume.

The WCIRB has about 250 employees and offices in San Francisco and Santa Fe Springs. The WCIRB Governing Committee operates similar to a Board of Directors by directing activities and setting funding and budget levels. The WCIRB Governing Committee consists of thirteen members. Seven members are private insurers elected by insurers. The State Compensation Insurance Fund is a permanent member. The Insurance Commissioner appoints two members representing insured employers and two members representing organized labor. There is also an actuary who represents the public members of the governing committee. In addition, the Department of Insurance is a non voting member but is represented at each meeting.

The WCIRB formulates advisory pure premium rates. Under the old rating law, the WCIRB used to calculate full minimum rates and also developed advisory rating

plans. Mr. Bellusci stated that the pure premium rates are advisory -- insurers can use, ignore, or modify and do what they will with them.

The WCIRB evaluates the impact of legislation to estimate the cost of benefit changes or the savings due to certain reforms. The WCIRB also issues about 120,000 experience modifications a year in accordance with the Commissioner's experience rating plan. The Bureau does many statistical compilations of loss information. The WCIRB is currently providing some information to assist Insurance Commissioner in monitoring the solvency of the insurance market. It also provides information to the various state agencies such as to the Cal/OSHA Targeted Inspection Programs and to the Commission in support of its Medical Legal study.

Mr. Bellusci spoke about the information that the WCIRB collects. The WCIRB collects data on aggregate -- the total amounts of premiums and losses that insurers pay in a particular year. This aggregate loss and expense information is a key component in the WCIRB's calculation of pure premium rates.

The WCIRB also collects policy information, loss and payroll data by the 500 or so industry classes. Many of the Bureau's 250 employees are involved in keeping the integrity of that data base. The WCIRB does about 30,000 physical inspections of employers' operations to assure that the right classes are being assigned. The policy documents are reviewed to make sure the classes conform with the WCIRB inspection records and to insure that the data is reasonable. In addition, the WCIRB derives data from surveys that focus on particular claims. The WCIRB also looks at the insurers annual statements and gets information from data that is submitted by insurers to the Department of Insurance.

Mr. Bellusci then discussed the Pure Premium Rating. He explained that there are two principal differences from full rates and minimum rates formulated under the old system and the pure premium rate that the WCIRB has now proposed and which is subject to the approval of the Insurance Commissioner.

First, the pure premium rates are advisory only and an insurer is under no burden to utilize them. Insurers can utilize the pure premium rate, deviate off them, make their own independent filings. Under the old system, the WCIRB calculated minimum rates which were the minimum an insurer could charge for a particular industry.

Secondly, the pure premium rates are not full rates -- they don't contemplate all expenses. By statute, the pure premium rates reflect losses, the costs of benefits, both medical and indemnity benefits including vocational rehabilitation, and all the costs to insurers of administering the claims. Unlike the old minimum rate, the pure

premium rate does not include provisions for commissions, the fees that insurers pay to agents to acquire business, nor does it include other acquisition expenses, overhead expenses, or premium taxes.

Mr. Bellusci explained that if nothing else changed when pure premium rates were established last year, all the WCIRB would have done is lopped off those five or six components and the rates would have gone down by 17.5%. That was kind of the conversion factor. The last set of minimum rates, the 1994 rates, had a provision of about 17.5% of premium for all these pieces.

Another key component of the pure premium rates and probably the most critical factor is the difference among industries. Workers' Compensation has very dramatic differences in the cost of claims among industry. What the WCIRB tries to show there is the average cost of benefits, medical and indemnity for a single employee at $20,000 a year. For an employee at an accounting firm it's about $60 whereas for a logging firm it's about $3,400 -- almost a 60 to 1 relationship. The Bureau believes the class system and pure premium rates are so critical because they attempt to reflect those differences among industries and what the costs of claims are.

Mr. Bellusci stated that the pure premium rates for 1996 reflect what the cost of losses and the cost of adjusting those losses are estimated to be on 1996 policies. The WCIRB estimates those costs by testing the current pure premium rates. So the proposed 18.7% increase has to be taken in context of the level of the current pure premium rates.

He explained that the WCIRB looks at 1996 policies and make a projection of the cost of losses and loss expenses will be on those policies and compares them to what income would be produced at the current pure premium rates. The Bureau tests the current pure premium rates against the projected costs to put them in balance. If the pure premium rate is too low then the income produced with those pure premium rates will be less then the cost on the 1996 policies. If increased, vice versa. The WCIRB is trying to adjust that projected income and those pure premium rates such that the system is in balance.

To project the cost for 1996 policies, the WCIRB used historical information from 1994, the latest year for which data was available. The Bureau looks at claim data and premium and expense information.

Mr. Bellusci stressed that since this data is so critical, the insurers and the WCIRB put lots of resources into insuring the integrity of that data base. Each of the top 50 insurers are required to have an independent auditor look at the data, send it to the WCIRB, and verify that it has been submitted in accordance with its requirements.

Bureau staff spend a lot of time in making sure all of that data looks reasonable and is consistent with other information that's submitted to them and to the Department of Insurance.

The Bureau looks at claim data and premium and expense information from 1994, and makes adjustments to reflect benefit changes and inflation to project costs for 1996.

Mr. Bellusci referred to a chart showing workers' compensation premium increasing from $3.9 billion in 1985 to $8.9 billion in 1993 and starting on its way down to about $7.7 billion in 1994. WCIRB projects the workers' compensation premium to be $5.9 billion in 1995.

The 1994 losses are adjusted to estimate what the claims will ultimately cost. Mr. Bellusci referred to another chart which shows that only 15% of the costs of claims on an 1994 accident will have been paid by the end of 1994. Another 16% will get paid in 1995 and an additional 22% will get paid between 1996-1998. Even after 16 years historical data suggests that as much as 10% of the benefit dollars on 1994 accidents will not have been paid.

The second actuarial type of adjustment that needs to be made is to adjust each of the historical years to the same level of benefits, the same medical fee schedule, and the same level of hospital inflation, so that there is an apples-to-apples comparison from year to year. The WCIRB does a similar adjustment with premiums. Since premium rates are a function of payroll -- rates are expressed per $100 of payroll -- if wages go up, premium goes up. Mr. Bellusci explained that basically the WCIRB restates each year's losses at the same level of benefits, same fee schedule, same level of hospital costs and restates each premium to the same wage level and the same rate level.

The last adjustment is for inflation, which Mr. Bellusci said was often the most critical and subject to differing opinions.

Mr. Bellusci then discussed the proposed 18.7% increase in the pure premium rates, which the WCIRB filed in July. He said this increase was very significant and probably the second highest the WCIRB has ever requested.

Mr. Bellusci emphasized that the Bureau is not saying is that losses are going up 18.7% -- in fact, losses are essentially flat in 1994. What the WCIRB is saying is, that in its opinion, the 1995 pure premium rates weren't adequate by about 14%.

He said that the 1995 pure premium rates assumed that indemnity, mostly because of reforms that went into effect in 1994, would drop by 6% when in fact it dropped by

9%. It also was assumed that medical would drop by 9 points and yet the loss level is flat. The pure premium rates are about 35% less then they were a couple of years ago. He said that the rates just dropped a little too far and a little too fast with respect to losses.

The 14% to make up for what the WCIRB believes is the inadequacy in the 1995 rates consists of 3% due to the 1994 losses coming in higher than contemplated; 6% for inflation in losses after 1994, and 5% due to the loss adjustment expenses emerging higher than contemplated.

The proposed 18.7% increase consists of that 14% to make up for the 1995 rate inadequacy plus a little less than 2% for the July 1, 1996 benefit changes and 3% for inflation in losses from 1995 to 1996.

Commissioner Rankin noted that the WCIRB assumed that the benefit utilization would increase in 1996 when it actually decreased in 1994. He also pointed out that the WCIRB public member's actuary estimated that maybe there should be a 7.3% increase rather than an 18.7% increase. Mr. Bellusci replied that the estimate reflects judgment and different actuaries can have different judgments. In the public member actuary's judgment, indemnity losses will continue to be at the same level they have been without inflation. He and the Bureau think there will be inflation. Mr. Bellusci does not think it means that either assumption is unreasonable -- it shows that there is an element of art to making such projections.

Commissioner Rankin asked when the Insurance Commissioner is going to act on the proposed premium rate increase. Mr. Bellusci replied that they were expecting a decision fairly soon -- within the next few days.

Commissioner Rankin asked what the insurers are actually charging relative to the pure premium rates. Mr. Bellusci responded that on average, insurers are charging about 7% more than the pure premium rates. There are insurers that are charging 20-30% more than the pure premium rates, and there are some that are charging less.

Commissioner Vach asked if the relative size of the account was a factor. Mr. Bellusci replied that he thought that's probably a component as well as that certain insurers are being more aggressive than others.

Commissioner Rankin asked if, in terms of the loss adjustment expenses, is there a wide fluctuation between companies and what percentage that represents.

Mr. Bellusci replied that there are two pieces of Loss Adjustment Expenses -- allocated and unallocated. Allocated is composed of things that can be allocated to a

claim such as defense costs and attorney's fees. Unallocated is primarily claims adjuster's salaries and other overhead type costs. When you look at the separate pieces there is great variation and partially it's definitional. Some companies use in-house attorneys and they may or may not apportion them back to the claim. Most of the larger carriers are within a fairly narrow band about that average when you look at both pieces combined -- all the loss adjustment expenses. But when you get to some of the mid sized and smaller carriers there is greater variation.

Commissioner Rankin inquired if loss control services are paid under loss adjustment or separately. Mr. Bellusci responded that he did not think that was typically considered loss adjustment expense, but was incorporated into one of the other pieces, such as other acquisition, or general expenses.

Chairman Steinberg asked what is meant by "other acquisition". Mr. Bellusci explained that it is actually other acquisition, field supervision and premium collection. It would have the advertising costs, costs of insurers to go out and audit the account for payroll, their underwriting function, all the processes that deal with the customer. The category of "General" would be more like accounting departments, overhead, actuary departments, grants and things like that.

Chairman Steinberg stated that he was trying to get an understanding as to how the Rating Bureau's function has changed from the time of the minimum rate to the open rating system. He asked if the WCIRB, prior to open rating, was charged by statute with developing the minimum rate.

Mr. Bellusci answered that the WCIRB was charged with developing a proposal for submission to the Insurance Commissioner and ultimately the Insurance Commissioner would have to approve any changes in the rates. The Bureau was charged with collecting the information, reviewing it, making its best judgment, and then providing that to the Commissioner who held a public hearing, took input from other parties, and then made a decision.

Chairman Steinberg observed that as a practical manner, the world as it existed before open rating was generally the WCIRB's recommended rate. He asked if the WCIRB had any competition. Mr. Bellusci responded that there wasn't another body like the WCIRB making alternate proposals but there were plenty of other parties who would review it and provide input to the Commissioner. Then the Commissioner, more often then not during the last ten years, made a reduction in the proposed minimum rate. Mr. Bellusci could not remember any minimum rate proposals that were increased by the Insurance Commissioner.

Chairman Steinberg asked what function this WCIRB recommendation serves under open rating where there is no statutory minimum rate.

Mr. Bellusci replied that even though the proposed 18.7% increase has gotten the most attention, the most critical piece is really the rate for each industry. If you start dividing the database into 500 pieces, there are so many industries that a single insurer doesn't have a significant body of information. No one insurer has very much of the business that it can determine what, for example, a welder should pay compared to a bank. That's really the critical piece -- the Bureau feels that it is necessary to keep a strong database that will reflect those differences by industry. Mr. Bellusci thinks that the maintenance of the class system is probably the WCIRB's biggest function.

Chairman Steinberg asked what the interaction now is between WCIRB and Insurance Commissioner under open rating, since the Insurance Commissioner is not charged by statute to decide what the minimum rate should be.

Mr. Bellusci replied that the Insurance Commissioner's role is very much like it was under the minimum rate law -- the pure premium rates won't be official until the Commissioner approves them. The prior Commissioner cut the WCIRB proposal last year. The Bureau filed for a pure premium rate with a 7.5% decrease and the Insurance Commissioner approved it with an 18% decrease. So that process hasn't differed that much. What does differ is the old rate law set the minimum rates. But now the pure premium rates the Commissioner approves now are advisory only.

Chairman Steinberg noted that a reserve controversy has existed between employers and carriers for years and wondered how the WCIRB rate setting process has affected it. Chairman Steinberg asked if, as a matter of practice and history, the WCIRB customarily accepts the history of the reserve practice of the individual carrier. Mr. Bellusci responded that the WCIRB does not look at an individual carrier. The Bureau groups the data together and looks at a number of statistics that are sensitive to reserve changes and at what happened to the average reserves. If the average reserve is growing or declining, the WCIRB will adjust for that in their projections. The Bureau also looks at data that's independent of reserves, just what's been paid and how they've grown or matured over time.

Chairman Steinberg asked the rate setting process would be affected if other carriers, or the State Compensation Insurance Fund again, gets hit with $20 million in punitive damages which are not reversed on appeal. Mr. Bellusci replied that a punitive damage award is not considered a loss from a litigation situation. Since it is not a benefit to the worker, it shouldn't get into the database.

Mr. Bellusci stated that the WCIRB has a proposal for a new experience rating plan to try to respond to those concerns. The Bureau has heard over years that reserves are outside the employer's control. The reserves impact the premium but the

process by which they are established is often incomprehensible to the employers. The WCIRB proposes to take reserves out of the experience rating plan completely and put all the focus on whether a claim occurred. So instead of having the dollars in reserves, that experience rating would have no impact on the mod which is the count of claims. The WCIRB has a proposal before the Insurance Commissioner who anticipates holding some investigatory hearings to get input from different parties. Mr. Bellusci indicated that the industry is very divided. The vote on the WCIRB board was five to four. It's a pretty radical change to throw out the old plan and the Bureau is trying to address that issue.

Commissioner Rankin asked how many public members took part in that vote. Mr. Bellusci answered that one public member took part and he voted against it. Another public member who couldn't attend the meeting indicated to the Bureau that he would have voted for it.

Commissioner Vach asked Mr. Bellusci to compare the Bureau to the National Council on Compensation Insurance (NCCI) and explain why there is a WCIRB.

Mr. Bellusci responded that it has been perceived over the years that California is such a big market. The WCIRB works very closely with the Insurance Commissioner almost on a daily basis and is very responsive to the Commissioner's concerns and to the situation in California. The experience rating plan issue is an example. The reserves have been a bigger issue here. The size of the market and the need for responsiveness is greater in California. Seven or eight other states have their own bureaus. The Bureau does more detailed work generally than other states and Mr. Bellusci thinks it's a function of the size of the market that the insurance industry has been willing to fund some additional activities to keep the integrity of the database.

Chairman Steinberg thanked Mr. Bellusci on behalf of the Commission and himself for his presentation.

Trends in Medical Costs and Medical Inflation: A Comparison between Workers' Compensation and Group Health

Chairman Steinberg introduced Edward Woodward, President of the California Workers' Compensation Institute.

Mr. Woodward provided the Commission members with some handouts pertaining to studies of workers' compensation medical in the last three or four years.

Mr. Woodward stated that probably the most pertinent is the Congressional Budget Office's projections for national health expenditures. The Congressional Budget Office has basically two projections. The most conservative projection is that by the year 2000 health expenditures will be 16% of the Gross National Product, and 18% of the GNP in 2005. Mr. Woodward said probably the most realistic is their pessimistic projection which calls for a 19.5% National Health Expenditures as a percentage of the Gross National Product -- about an 8.5% inflation rate on an annual basis.

Mr. Woodward noted that there has been a lot of confusion about what is happening. Managed care has been said to have controlled/tamed the inflationary beast. He provided a couple of articles where some economists and others aren't sure that's the case. Those persons think that the rate of underlying medical inflation continues and that the structural changes really haven't produced anything significant.

Mr. Woodward went on to say that those economists believe that two things have happened. One is that there has been a shift into HMOs from fee for service. Basically more and more people are being shifted into the cheaper delivery mechanism. This can be done one time. Once you shift the people into the lower cost, if the lower cost inflationary pressures are the same as everyone else's it'll kick back up and that's what they think basically is going on. The other thing that they think is masking inflation on a temporary basis is that the marketplace is removing excess capacity in the hospitals and many of them are closing. There's just too much capacity. So we'll see what the inflationary aspects of hospitals are after the market shakes up. But at least temporarily there's too much capacity. So those two things are rather significant. It also indicates that probably medical inflation is not under control and the jury is probably still out on managed care by whatever definition people choose to use at this point.

Mr. Woodward then addressed how workers' compensation actually looks in comparison on what is particular to California. He said that medical costs in the last two decades have gone up astronomically -- 80% faster than payrolls, 200% faster than the number of indemnity claims and 300% faster than the rate of increase of all claims. From 1970 to about 1992, the medical inflationary trend in workers' compensation was even worse than that of health care generally.

Mr. Woodward related that the second major development was a dramatic shift in what portions of medical costs were driving. In the early '70s it was about a 50/50 split between hospital and physician services and the total cost was 200 to 250 million dollars. In the 1990s, physician costs are now about 75% and hospital costs are about 25-30%. This situation calls for a sort of a Willie Sutton school of analysis which is "follow the money".

Mr. Woodward then explained the general approach CWCI has taken on several studies. CWCI constructed some databases of 290,000 workers' compensation claims and also purchased a group health database from a company called MedStat that has about 100 insurers and 6 million covered lives. This enabled CWCI to do some comparisons with workers' compensation and group health or look at them individually. There was a lot of interest for that, particularly with the emergence of the national health care proposals and other types of things that were happening. Questions included: how does workers' compensation behave, how much does it cost and how much does it cost when you compare it to the group medical system.

The first CWCI studies evaluated the one tool for cost containment that workers' compensation has -- the official medical fee schedule. CWCI has been looking at that on an annual basis since 1980 and the results of the analysis over the years have been pretty consistent: the fee schedule is supposed to be updated every two years and it frequently was not. The current fee schedule needs to be updated again and Mr. Woodward understands that will be coming out shortly. The results are always the same -- the last study showed that 96% of all procedures were paid at or below the fee schedule. The fee schedule in fact controls the unit price. Every year CWCI found that basically the payers were adhering to the fee schedule. Despite that, costs were going up.

Mr. Woodward went on to explain that if unit price is controlled, the only other way for the system to increase inflationary trends is through utilization. He said that utilization is definitely the major problem in California. CWCI did some research in 1993 on physical medicine, because in looking at the fee schedules, 30% of the costs were now going to physical medicine -- physical therapy, chiropractors, hot packs, massages, and so on. There has been a dramatic increase in these types of services and CWCI determined that there were two factors that drove it. It wasn't the fee schedule; it was the number of visits and the number of providers. Where there were more than 10 visits, 30% of the claims had 75% of the costs. And that was significant. The other thing was the number of providers that are involved. If there were more than one provider involved in providing services, costs went up an average of about 52%. The thing is, is that good, is that bad, what do you compare it to? CWCI knew that workers' compensation was having these kinds of experiences.

In August 1994, CWCI looked at workers' compensation versus group medical by taking a global look at those workers' compensation claims and group health databases, controlling statistically for age, sex, type of injury and matching them up. Group health consisted only of fee for service and PPO plans because there was not HMO in workers' compensation and CWCI didn't think it would be a fair comparison.

CWCI found that for medical treatment in general, workers' compensation was 21% higher -- treating for the same injuries and illnesses, workers' compensation costs were 21% more on average. It also found that 68% of the payments in workers' compensation are for neuromuscular skeletal types of injuries versus about 10% on the group health side. So significantly different types of populations are in the two systems.

When CWCI looked at primary care physicians versus specialists, it found that 7% of the dollars in group health and 19% in workers' compensation go to specialists. Group health uses primary care physicians much more than workers' compensation does although office visits are the most common in both systems. Chiropractors are used twice as often in group health than in work compensation.

As CWCI surmised, workers' compensation has shifted even quicker to out patient care than in patient hospitalization -- 92% of the payments in workers' compensation are for physicians and outpatient treatment versus 84% in group health. Group health uses in patient hospitalization more than workers' compensation does for the same types of injuries.

On an inpatient hospital comparison, CWCI found that workers' compensation paid less for the inpatient hospital care but paid more for the physician component. But on average workers' compensation came out the same as group health. So interestingly enough, workers' compensation is not using hospitals nearly as much, but seems to be more effective which is something CWCI didn't expect. The average unit price in workers' compensation is 25% less per procedure than group health.

Mr. Woodward pointed out that workers' compensation was paying 25% less in unit price and yet its costs are 21% higher than group health. The reason is utilization. Workers' compensation uses 21% more treatment and 78% more medical procedures on average. The number of procedures per treatment is 41% higher and the number of treatments per week is 119% higher for workers' compensation. So on every measure of utilization that CWCI looked at in these two systems, workers' compensation was consistently, significantly utilizing services at a much, much more intense rate. So both the intensity and frequency of services were higher in workers' compensation.

Mr. Woodward said that another interesting statistic was that group health treatment goes on 44% longer than workers' compensation. Workers' compensation is short duration, intense, high frequency treatment. Group health is much less intense and over a much longer period of time.

Mr. Woodward then reviewed CWCI's findings on non-surgical back injuries, primarily soft tissue injuries, sprains and strains, in the two systems. It determined

that the cost of medical treatment in workers' compensation is 45% higher to treat a back injury than it is in the group health system.

Physician costs are 65% higher in workers' compensation generally speaking than they are in the group health system. Average inpatient hospital costs however, are about half as expensive. So at least on a per diem basis workers' compensation is paying about the same as group health, but for some reason it has a shorter length of stay within the hospital. The key is the physician services. This is where we are spending our money in workers' compensation.

Commissioner O'Hara asked if CWCI had any providers who are in both camps and did it compare the way those providers bill in workers' compensation as opposed to group health. Mr. Woodward that CWCI had two separate databases and would be unable to do that.

For non-surgical back injuries in the workers' compensation forum, the number of visits is 23% higher, there are 81% more procedures, 49% more procedures per visit and 149% more visits per week. Duration again was about half and the average price per procedure is still about 25% less. Mr. Woodward indicated that workers' compensation is still controlling the unit price but not the overall cost because of utilization.

Another interesting thing that CWCI has found is the mix of services given to a particular patient is quite different. Diagnostic studies, MRIs, CAT scans, X-rays, and other types of things are used at a rate four times higher in workers' compensation than they are in group health. Physical medicine is used at a rate of 75% higher in workers' compensation than in group health. Consultations occur in 23% of the claims in workers' compensation while only 3% of the claims in group health use a specialist in consults. Payments to specialists are 7 times greater in workers' compensation and 70% of the specialist costs are from diagnostics. All of these types of procedures and diagnostics are routinely done in workers' compensation cases.

Mr. Woodward pointed out an interesting fact included in a piece of research done by Zenith Insurance Company which compared group health and workers' compensation and found again that workers' compensation is more expensive. Interestingly, they found it for a different reason. The average cost for procedures and things were higher rather than the utilization. They duplicated this study for California as best it can be done and basically their findings overall are very similar to what CWCI's findings were. They did a study of back injuries and found the problem was utilization. So their statistics independently are fairly close to what the Institute's information has shown to this point.

Mr. Woodward said if we know in fact that workers' compensation spends more money and we know where and when it spends the money on what types of services, the question is what is going to be done about it. Mr. Woodward thinks that one of the problems and one of the criticisms in some managed care approaches has been that insurance companies or health care organizations are dictating practice to doctors. The doctors aren't deciding what treatment is good. But how do we control the utilization and tell the doctor what's good or bad? The answer is treatment guidelines.

Chairman Steinberg asked how Mr. Woodward contemplated the guidelines would work -- would carriers just not pay for services that aren't in the guidelines? Mr. Woodward replied that guidelines can be sort of a tool for utilization review prospectively and as a positive tool to increase communication between the medical provider and the payer. The problem with retrospective reviews such as bill schedules, it's after the fact, after the service has been provided. At this point expenditures have been made and it's not a good time to start communication. He sees that individual carriers are trying to adopt this prospective approach.

Chairman Steinberg asked if the guidelines on industrial asthma and contact dermatitis recently published by the Industrial Medical Council are the only two that have been published. Mr. Woodward responded that the IMC is working on the back and neuromuscular skeletal guidelines, which are getting a lot of comment.

Chairman Steinberg asked what kind of input went into the development of the guidelines. Mr. Woodward responded that the IMC contracted with the University of California initially to develop the guidelines and then the IMC held some hearings at which CWCI testified. IMC was then going out to what they call consensus panels to come up with a consensus view of what the guidelines ought to be about.

Chairman Steinberg asked about the difference in the CWCI study in the front-loading aspect of the industrial injury cost compared to non-industrial injuries. Mr. Woodward replied that one theory is that such treatment is in fact appropriate and that workers' compensation is really engaged in a sports model type of medicine because it's a disability system. Workers' compensation wants to provide this treatment to get injured workers back on the job as quickly as possible so it's worth it to do that. A second theory is that a lot more information is needed because of the litigious nature of workers' compensation. Information is needed to set reserves, to decide liability, to figure out permanent disability, so a lot more diagnostics and other types of services, consults and things are necessary than in group health which is a contractual system.

Chairman Steinberg asked Mr. Woodward if he thought managed care is a helpful tool in reducing medical costs. Mr. Woodward said that it was a difficult question to answer because the jury is still out and that it also depends on the definition of "managed care". Managed care has several features, including control over utilization, control over unit price, and somehow an intervention for returning people to work. Additionally, Mr. Woodward sees in most of the models that there is a shifting of economic risk two ways. One is to the employees through the use of co-pays, deductibles, these types of things. In fact, the latest estimate is that 23% of the national health expenditures are out of pocket. The second shift is to capitated plans where the provider is at risk.

Chairman Steinberg thanked Mr. Woodward on behalf of the Commission for his presentation.

Medical Cost-Drivers: An Analysis

Chairman Steinberg introduced Mark J. Gerlach, an independent Insurance Consultant who also has a role as a consultant to the California Applicant's Attorneys Association.

Mr. Gerlach said he worked first for the insurance industry, then for the California Insurance Department, and for the past 20 years or so as an insurance consultant working with associations and other groups. He has been heavily involved in workers' compensation, primarily trying to get the elimination of the minimum rate law the past decade, something that succeeded early this year.

Mr. Gerlach said he was asked to talk basically about the presentations made by both the previous speakers, including the 18.7% rate increase and the question of the cost drivers that are inherent in that rate increase and most specifically the medical cost component.

Mr. Gerlach said the most cogent observation that can be made about the filing for a 18.7% rate increase is that it really came out of the blue for virtually everybody who is connected with the workers' compensation system. Almost immediately after the 1993 changes were adopted, he started getting information on what was happening in the workers' compensation system, and it all pointed downwards. At the point immediately prior to the Bureau's filing, insurance claim costs on policies issued in 1992 were 2 billion dollars lower than the claim costs of policies issued in 1990 -- from $5.9 billion down to $3.9 billion. The number of insurance claims made under those policies had dropped by over 18% -- there were 170,000 fewer claims made that year. The Department of Industrial Relations' work injury statistics showed that the

rate of work injury was down nearly 10% in 1993 to 9 work injuries per 100 workers, the lowest figure that they had ever recorded in this series which they had been collecting since 1972. The CWCI quarterly figures on claim frequency all through 1994 kept showing record lows.

Given these indications, Mr. Gerlach said that it was rather startling for the Rating Bureau to come in with an 18.7% rate increase and it was interesting for Mr. Bellusci to say this was the second highest increase ever requested. The WCIRB has been around basically since the beginning of the workers' compensation system in 1916, so to say that this is the second highest increase in history is saying something. Furthermore, the fact that this increase came at this time was puzzling in view of the market conditions.

Mr. Gerlach stated that the one thing that everyone has been hearing about the market is that there's just tremendous competition out there. The insurance carriers are out there cutting each other's throats to get business. This is not typically the reaction of the insurance industry when the Rating Bureau comes in for a high increase. Typically the reaction of the insurance industry in that situation is a threat to pull out of the state unless they get their rate increase. In this case, they're tripping over themselves to cut each other's throats to write business in the state of California at rates which Mr. Bellusci says are only 7% higher than the pure premium rates. Although as Mr. Bellusci indicated the average expenses were supposed to be 17% higher, the fact is the insurers are writing business lower than the current pure premium rates. All the data that's coming in said that we should be looking at further decreases. So what's the story? Basically, the story is what we've already gone over here this morning.

Mr. Gerlach said that the raw data that was reported by the Rating Bureau is very interesting. The underlying data basically shows that the last couple of years were among the most profitable in the history of the Rating Bureau, in the history of the workers' compensation industry in California. Those loss ratios, even on a fully developed basis, are among the lowest ever recorded in California, or at least since accident year data has been recorded in California. So basically the answer is that it's not a question of the loss data itself; it's really a question of the adjustments that are made to that loss data. And as Mr. Bellusci pointed out, there are serious questions brought by actuaries and others, as to the validity of some of the assumptions that have been made in making the proposal.

Mr. Gerlach stated that we tend to think of rate making as a precise mathematical formula, but, as Mr. Bellusci pointed out, rate making is not an exact science. There are parts of rate making where the traditional historical data is considered and there are parts of rate making that involve precise mathematical formulas. But there are many, many parts of rate making that involve judgmental decisions, such as loss

development. In the area of loss development to be specific, the Rating Bureau goes back and looks at loss development ever since the collection of accident year data was started. For example, the WCIRB looks at the development of a claim that was reported in 1970, and seeing how it changed in 1994. Then they make the assumption that a similar change is going to occur to a 1996 injury in the year 2020 because that's 24 years later. Now that may be a precise mathematical calculation, but it's much less precise when you look at the theory of it. What is assumed is that changes in medical costs that have affected claims over the past 20 years are going to be the same over the next 20 years. Very similar assumptions are made for everything else. We have to make assumptions that the types of claims and claim payments that are being reported are going to be similar. If not, we have to make adjustments.

However, Mr. Gerlach pointed out that there have been tremendous changes in the scope of the workers' compensation system over the past several years, in the types of injuries that are compensated and in the way that those injuries are compensated. At the same time, there has been a tremendous change in the economy of California. All of these things affect the historical patterns that are needed to adjust those rates and he said that is where he had some problems with this rate increase. The question of whether the rate increase is necessary basically comes down not to a review of the data itself, but to whether you believe that some of these changes are going to affect the future of claim payments in California.

Mr. Gerlach said, for example, we can make a mathematical calculation as to the effect of the $16,000 cap on vocational rehabilitation plans. We could just go back in all the other plans and cut off the amount that we paid over $16,000 and assume that we won't pay that in the future. But first of all, what sort of adjustment can be made for the change to the incentive of either the employer or the employee to get vocational rehabilitation when there is that cap? And secondly, what kind of adjustments do we make to reflect that we have also increased the incentive to the employer to use alternative work programs instead of vocational rehabilitation plans? The entire spectrum of vocational rehabilitation has changed -- it's not just capped at $16,000. An adjustment cannot be made by one single mathematical equation; the whole factor must be changed.

Mr. Gerlach described other systemic changes inside and outside the system. For example, the defense industry has been decimated in California and this has caused a change in the type of work that is being done in the state. There are many fewer manufacturing jobs and a lot more service and retail type jobs. The type of work injury in the service and retail industry is much different than the manufacturing industry -- we're seeing more carpal tunnel and more repetitive stress and strain type injuries. These are going to change the claim payment patterns, the historical patterns that we look at when doing the rate making analysis.

Mr. Gerlach believes that the evidence shows that normal inflationary pressures are still affecting the workers' compensation system. The 1995 first quarter claim data as reported by the CWCI still shows a decrease from last year's first quarter, but claim frequency can't keep going down forever. So eventually, we have to assume that claim frequency is going to be turning around. In Mr. Gerlach's opinion, the problem with the rate making analysis as it was presented by the Rating Bureau was that it looked too much at the historical data and not enough at the changes in the system that we need to reflect in that data.

As far as the issue of medical costs, Mr. Gerlach said that a number of things needed to be considered. For example, in the data that the Rating Bureau presented, reported medical costs have dropped from $2.9 billion in 1991 to $1.6 billion in 1994 -- a decrease of 45% over that period. So the problem of medical costs has to be kept in context. Medical costs are not increasing -- they are going down quite dramatically. The problem is that indemnity costs dropped almost 60%. So indemnity costs are going down even faster than medical costs. That means that medical costs are becoming an even greater percentage of the benefit payment dollar in California then they have been in the past. This is where you get the scenario that there might be a problem here. However, again, we have to look at the entire situation.

For example, Mr. Woodward just said that medical costs typically are significantly higher in the workers' compensation system than in the group health system. However, the goal of medical care in the workers' compensation system is entirely different from the goal of medical care in the group health setting. Mr. Gerlach stated the goal of medical treatment in a workers' compensation setting is basically to get the worker back to work. That should in theory call for such things as front loading of medical costs and perhaps slightly higher intervention costs on a medical care basis than one would get under a group health basis. So again, we can't just look at percentages as we can't just look at the historical data in the workers' compensation database as collected by the Rating Bureau. You can't just look at these raw numbers without trying to analyze what the numbers mean.

Mr. Gerlach said there are other changes that we have to look at in the workers' compensation area that can affect medical costs. There has been a major effort under the workers' compensation system to speed up the claim process. We have tried to get vocational rehabilitation handled earlier. We've tried to get the evaluation of injured workers handled earlier. We've sped up the dispute resolution process. All of these things are going to mean that indemnity costs are probably going to be less but this is not going to affect medical costs. So in theory again, if we've been successful in some of the changes that we've had, we should expect that indemnity costs are probably going to be dropping faster than medical

costs. However Mr. Gerlach did not want to leave the impression that medical costs are not an important area to be looking at because it is a growing cost area.

Mr. Gerlach discussed why medical costs may not be decreasing as expected in the scenario that the Rating Bureau laid out. The WCIRB expected them to decrease at 9% and apparently they stayed about level last year. He said we have to recognize that medical costs in a workers' compensation system are the tail of the dog. Medical costs in the workers' compensation system are affected by all the other factors that affect health care costs in the United States. Workers' compensation is only a small part of the health care benefit dollar in the United States, estimated at about 2%. So what happens in the workers' compensation area is really dictated by what happens in other areas.

As an example, Mr. Gerlach related that he just got a notice from his insurance carrier that they are no longer going to use UC Davis Medical Center. The Medical Center says that because of their need to provide primary health care to the uninsured, they have to charge more to the insured population. Workers' compensation is an insured population. Just as costs have shifted in the other insurance carriers, costs are going to be shifted in workers' compensation. And to the extent that we have not taken care of the problem of the uninsured on a national basis, we're going have to accept the fact that the workers' compensation system in California is going to pick up some of those costs.

Mr. Gerlach stated that another fact that we have to recognize is that the treatment of medicine has changed dramatically within our lifetime. The technology that is now available within the medical profession is amazing and really helps the practice of medicine but it is also very expensive. And it's also more expensive to keep someone alive with a heart/lung machine or a heart/lung transplant then it is to let them die. If you can give somebody a transplant or you can fix somebody, they have continuing medical costs that they wouldn't have otherwise. The technology increases that we've had in the medical field have to be considered because we can't just say that medical costs are going up without looking at what we're getting out of it. So technology has paid a big role in the increase in medical costs.

Mr. Gerlach said that the biggest factor is probably the advent of managed care. For example, one of the judgmental factors that was used in the rate filing was that the increased use of managed care is going to save money in the workers' compensation system. He very much supported that notion last year. The idea of adopting the change of managed care without having some sort of reflection of possible cost savings seemed unfair to Mr. Gerlach. Nevertheless it is a purely judgmental factor that has absolutely nothing to do with historical data and with precise mathematical computations. Mr. Gerlach thinks that we need to look at the whole issue of managed care and decide what is the role of managed care in workers'

compensation and where managed care could possibly save money in workers' compensation. On a theoretical basis, the primary area for savings from managed care is in the area of preventive medicine. For example, a managed care provider has incentive to give prenatal care to pregnant mothers; it's much cheaper to give prenatal care then it is to care for the child who is born disabled after receiving no such care. But in the workers' compensation system, the worker doesn't enter the system until they are injured and there are probably not many prenatal examinations in workers' compensation. So from a theoretical basis, there is probably less justification for savings in workers' compensation due to managed care in the preventive area than there would be in the general health care area.

That leaves other procedures, such as utilization review, pre authorization, and case management, as the primary tools for saving workers' compensation costs through managed care. But these are not cost free methods themselves. It may be true that utilization review does save some money on the medical cost area, but how much does it cost to review every single claim to be looking for utilization outlyers? There have been possible savings but they being eaten up by the added expense of managed care? That may be why no savings were reflected last year in medical costs. It may be that there were some savings in treatment costs but they were used up paying a new multi-million dollar industry of utilization reviewers, bill auditors, and third party reviewers who look at medical costs.

Mr. Gerlach outlined certain questions about medical care costs that need to be addressed. Those questions include:

- What are the cost drivers in medical costs? Utilization? Doctor's fees? Hospital costs? He thinks that the study Mr. Woodward outlined is a good start in that direction.

- Has there been a change in the level and type of service being provided in workers' compensation? If the nature of the work injury and the type of claim administration are changing, we may actually want to increase medical costs so that we can decrease indemnity costs. But we need to examine what types of claims we're getting, what the costs of these different types of claims are, and how that's changing in the system.

- What role does cost shifting play in the rising cost of health care in a workers' compensation system? We certainly don't want to put additional penalties or restrictions on a workers' right to get full medical benefits because of cost shifting or other extraneous factors about which the worker has no control.

- What sort of managed care procedures are actually being utilized in workers' compensation, how much are they costing and how much are they saving? Is

the proliferation of services available out there in the marketplace really paying for itself right now?

- How do we make sure that the system provides quality care? That is really the answer to reducing medical costs in the system. There are many questions about what the role of managed care is. Some view it as a managed cost system, not a managed care system. They're looking at it from the cost standpoint and not the quality of care standpoint. Mr. Gerlach believes that we have to try to reverse that syndrome so that the quality of care is the first and primary issue involved in the workers' compensation system. Giving good prompt quality care is the cheapest medical care you can give. So we have to watch out that in our drive towards cutting costs in the workers' compensation system that we don't affect the quality of care. Mr. Gerlach thinks that it has to be a primary concern in any cost measuring system that is developed. We can't just look at costs, quality must be considered also.

Mr. Gerlach asked if there were any questions.

Chairman Steinberg asked Mr. Gerlach about the pure premium advisory rating and what practical effect it has and what use it is in the open rating system.

Mr. Gerlach responded that he agreed with Mr. Bellusci that one of the primary uses is the collection of statewide data that gives relative information from classification to classification. It also provides one additional advantage and that is that rate making, although it is largely an art, does depend to a certain extent upon historical data and there are only a certain number of insurance carriers out there that have adequate information on their own to make an estimated guess what the rates should be. In a completely free and open market with no rating bureau or no central repository of information, only the largest carriers would actually be able to compete in that marketplace. The smaller carriers would to a large extent be unable to estimate what the trends are affecting the system, what the cost pressures are affecting the system. Their own data is insufficient to provide that information so some sort of general repository of information is needed.

Mr. Gerlach said one of the areas that he has been pushing over the last several years has been to get a data information system set up within the state of California. The Department of Industrial Relations has a proposal to establish a data information system which would collect much of the similar data that is collected by the WCIRB. Unfortunately, that information system is currently being attacked by some quarters as being an intrusion on employers' rights. Mr. Gerlach believes that the development of an independent data source such as this is an important goal. If there were such an information system, then the role of the Rating Bureau would be reduced even further although the classification issue would probably still be a

role that the Rating Bureau could play. At the present time Mr. Gerlach believes that the WCIRB is still playing a role in the system. Whether the WCIRB should actually be developing pure premiums or should just be a central repository of information that would be available to insurers and employers and others in the system might be a question. But as of right now, establishing that classification relativity is a very important function of the Bureau.

Commissioner Rankin referred to the efforts being made to change the experience modification system. He asked Mr. Gerlach how this might affect an industry if the system shifts from taking severity into consideration and just uses frequency.

Mr. Gerlach said that the initial indications are that it will flatten out the spread of experience modifications to a certain extent. Some employers with higher modifications will be reduced somewhat and some with lower modifications will be increased somewhat, but that's going to vary drastically according to the individual risk. The current experience rating plan is based upon an analysis of the claim payments made for an individual employer to the claim payments expected for an employer within that industry group. If you as an employer are at the average of your employers in your claim payments, then you get a 1.00 factor. If you're better than average, you get lower and if you're worse than average, you get higher. However, the WCIRB doe not use just straight claim payments. They take the claim payments and they cap them at certain amounts so that the current system already has a cap that eliminates the most severe losses within an employer's claim record. So in effect we have a system now that reflects both frequency and to this limited extent severity. It is probably a fact that the workers' compensation community is not as concerned about a lot of very small temporary disability injuries as it is with more major injuries and he thinks that the current system reflects that differentiation while still reflecting frequency through the use of the raw numbers. Mr. Gerlach stated that he believes that the current system is a better system in that it reflects frequency and a capped severity.

Commissioner Rankin stated that the theory of experience modification is that it is supposed to give breaks to employers who are more safety conscious and expressed concern that this new system might not do that.

Mr. Gerlach thought that the trend was moving in the wrong direction. Last year he was a big supporter of the Targeted Employer Program which is an effort to identify those employers who are outlyers. Interesting statistics show that across classifications there are good employers and bad employers. It's not just that some classifications are more dangerous than others because even within dangerous classifications, there are good employers and bad employers. Within safe classifications, clerical office or attorneys, there are good employers and bad employers. In any classification, the worst employer is about 10 times as bad as the

good employer. Mr. Gerlach believes that we ought to try to identify those guys who are 10 times worse than the good guys. He thinks we have to figure out where the costs are coming from and target our regulations, our financial incentive programs, whatever, towards those employers. Moving experience modifications to a less narrow range is not helping in that regard. As a practical matter, the Targeted Employer Program actually works off of the experience modification factor and the proposed change is going to cause major dislocation within that program itself. If we change the experience modification factor, we in fact take some employers out of that high group just because we've changed the mathematical computation. He thinks that Commissioner Rankin is right. From an incentive standpoint, the idea is to get more of the incentives -- be they regulatory incentives, be they financial incentives, be they a cost increase, whatever -- targeted toward those employers and this proposed change probably moves us in the wrong direction.

Chairman Steinberg thanked Mark Gerlach for his very helpful presentation and said that the Commission would look forward to seeing him again.

Executive Officer's Report

After a ten minute break, Chairman Steinberg called upon Executive Officer Christine Baker to present her report on the status of the various Commission projects and activities.

Ms. Baker started with the special reports and then gave a status update on existing Commission projects.

DWC Task Force Meetings

Ms. Baker announced that minutes from the Dispute Resolution Committee meeting on September 14 & 15, 1995 were included in the information packet distributed to Commission members. The next meeting of the DWC Dispute Resolution Committee is scheduled for Wednesday, November 1, 1995 in San Francisco.

A proposed draft of rules regarding service by electronic means developed by the DWC Simplification Task Force was also included in the information packet.

Records Retention

Ms. Baker reported that the requirement to retain WCAB casefiles for 25 years was eliminated by Senate Bill 1051, which was signed on Wednesday, October 4, 1995.

Information Services to Injured Workers Project

The Information Services to Injured Workers project is being conducted jointly by UC Berkeley's Labor Occupational Health Program (LOHP) and Survey Research Center (SRC). The project examines information services provided by all parties and organizations, including the state government.

Six of the seven focus group meetings with injured workers have been completed and the final focus group meeting is scheduled for October 21, 1995.

Ms. Baker met with LOHP and SRC to prepare for the next Advisory Committee meeting which is set for Tuesday, October 17, 1995 in San Francisco. At the Advisory Committee meeting, priorities for the survey research will be discussed. These areas include:

- information from employers regarding basic rights, procedures and timelines
- information from insurers regarding basic rights, procedures and timelines
- information and help from DWC Information and Assistance Officers
- reasons injured workers retain attorneys
- job security and future employability
- delays in settling
- need for more information and social support

Medical-Legal Project

The Medical-Legal study, designed to evaluate the impact of medical-legal evaluation reform on California's workers' compensation program, is being conducted by the UC Berkeley Survey Research Center. The analysis will be based upon a set of data created by the Workers' Compensation Insurance Rating Bureau at the request of the Legislature to evaluate the 1989 reforms. Since that time, the WCIRB has continued to collect these data on an annual basis.

On October 2, 1995, the data from the WCIRB's 1989, 1990, and 1991 Permanent Disability Survey was delivered to the Commission in magnetic tape format. WCIRB has indicated that information on surveys completed this year will be available in 30 to 60 days.

Vocational Rehabilitation Project

The Vocational Rehabilitation Reform Project is being conducted by the UC Berkeley Survey Research Center.

Ms. Baker said that the next advisory committee meeting is scheduled for Wednesday, November 15, 1995 in Berkeley. This discussion will focus on a review of the draft of the survey instrument.

Loss Control Services Project

The Assessment of Loss Control Services project, being conducted by the School of Health and Social Work at the California State University at Fresno, is designed to evaluate changes in the quality and quantity of loss control services before and after the reform legislation.

The "Background Summary and Literature Review of Workers' Compensation Insurance Loss Control Services" has been completed and was included in the information packet distributed to Commission members.

A Project Advisory Committee, consisting of interested members from the workers' compensation community, met for the first time on Wednesday, September 27 in San Francisco.

Ms. Baker reported that issues raised by the advisory committee included the following:

1) Data that would measure the impact of loss control services before and after the elimination of the minimum rate law is difficult to obtain and analyze because:

    - employers are shifting among various workers' compensation insurers;

    - the types and ranges of loss control services vary widely. The specific loss control services provided by insurers both before and after open rating need to be characterized carefully.

2) The proposed mail survey may not yield reliable information because a one-time snapshot cannot effectively measure loss control services which take place over time. Employers may not be able to evaluate accurately the loss control services provided to them.

3) The workers' compensation community believes that the current market is too chaotic to provide useful information. A study conducted after the market settles down, which may take several years, would be more accurate.

4) Several members of the Loss Control project advisory committee have suggested that we go back and reset the objectives for the study. They have also indicated that the community would be better served if the study could identify effective loss control services, particularly for high-hazard industries.

Subsequent to the advisory committee meeting, a revised project plan was submitted by Professor Waite. Several thoughtful letters were also received from advisory committee members suggesting various research approaches and methodologies.

It is clear that this issue is very complex and the study plan requires further refinement. Ms. Baker recommended that the activities of the Fresno contract be put on hold, pending further meetings with the advisory committee to summarize and prioritize their suggestions and evaluate the revised proposal.

Commissioner Vach said he was quite impressed with the candor of the Loss Control Community at the Advisory Committee meeting. He rather suspected they would be defensive about the issue of reducing resources to Loss Control Services but he found them to be rather up front about the fact that they weren't sure what was happening within their own community as well as within their own company from the focus of the their Loss Control Services. Also, because of the shift between carriers, they were losing grasp on what type of services they should be providing in the new insured community which seems to be focusing more on price than loss control. It also became clear that they're not even sure amongst their own insureds who is best in need of services and which employers once they receive the services will make use of them. He said he came away rather impressed with the degree to which the community is questioning itself and making it clear that they have problems internally in assessing what loss control services are doing today.

Commissioner Rankin said that from reading the minutes of the Advisory Committee meeting, he gathered that there's a real lack of commitment on the part

of insurers to providing safety services and that maybe the money would be better spent if the insurers started funding Cal/OSHA in a major way.

Chairman Steinberg said that he thought what the Advisory Committee was really saying is that they are not sure if their insureds are all that interested in the services that carriers may provide.

Chairman Steinberg remarked that perhaps the Commission had better step back on this project rather than going on with the original focus -- the effect of the open rating system on Loss Control Services. Since part of the Commission's legislative charge is to look into the system and report on it, Chairman Steinberg thought the Commission ought to reframe the issue and refocus where its research funds should go and rather than go on with the original plan.

Commissioner Rankin said that he had no objection to that but he did not want the Commission just to give up on this question of Loss Control and how the moneys are being spent and what makes sense. Chairman Steinberg replied if the carriers and maybe Cal/OSHA aren't doing the job of increasing safety, the corrective role of the tort system could always be relied upon.

Chairman Steinberg suggested that the Commission terminate the study contract with the California State University at Fresno and direct the staff to refocus its attention and reframe this Loss Control issue in a way that's going to serve the entire workers' compensation community. Commissioner Rankin made a motion to that effect, Commissioner Hlawek seconded and the motion passed unanimously.

Ms. Baker asked for the discretion to use part-time funds to get some assistance in looking at where can we get some of the data. The Commission concurred with that request.

Commission Symposium

Ms. Baker reported that the Commission staff continues to plan for the Commission Symposium, scheduled for Thursday and Friday, April 18 and 19, 1996 in San Francisco.

A letter to the International Association of Industrial Accident Boards and Commissions (IAIABC) was sent on September 25, 1995, requesting that the IAIABC Foundation consider providing a sponsorship account to cover part of the cost of the Commission's Symposium.

Ms. Baker received word that the IAIABC Foundation is awarding the Commission an unrestricted sponsorship account for $10,000 which will help pay for a portion of the travel of Symposium speakers. This will also cover the costs for a reception and refreshments for Symposium participants.

The Commission currently going through the bidding process to contract with a hotel in which to hold the Symposium. Ms. Baker reported that she expected that the Hyatt Regency may win the bid since it is the only one she knows of which meets the specifications of size, location, cost and availability.

Grant Projects

The 1994 grant projects are progressing smoothly. Six of the grant recipients have received their second and final grant payment. Commission staff have been in contact with the remaining three grant recipients, and will issue final payment when all required reports have been received.

Grant Library

Ms. Baker met with Dave Bare of the Consultation Unit of Cal OSHA and made arrangements for the Commission grant library to be moved to the Sacramento Training and Education Unit. This transition is expected to take place in early November. Mr. Bare has agreed to provide the Commission with the ongoing status of the grant library and any problems they may encounter. Commission staff will continue to monitor the library function as well as maintain the grant contracts and follow their progress.

Grant Refund Collections

Ms. Baker reported that to date, $138,905.26 in unused grant moneys have been identified as refundable to the Commission and $94,900.22 have been collected. Commission staff continue to contact grant recipients requesting further refunds or explanation of expenditures.

Proposed Plan to Study Permanent Disability

The Commission has been discussing the Permanent Disability issue. In response, the Commission staff has prepared and submitted a draft plan for a possible study of the issue of permanent disability.

Initially, the Commission may wish to hold a public hearing to obtain input from the workers' compensation community. The response could then be compiled and the findings submitted to the Commission for a decision as to proceed.

The DWC Administrative Director has suggested that the Commission and DWC conduct this hearing jointly.

Ms. Baker related that Commissioner McLeod advised her by telephone that he felt this issue could be addressed sometime in January through a public hearing.

Commissioner Hlawek voiced his support for a public hearing on permanent disability.

Commissioner Vach expressed his concern that this hearing be relatively independent of the DWC. The Commission should separate the discussion from the existing system as much as possible so that people would be relatively free to propose or plan a study that may or may not involve the DWC in the development of the study. He would be opposed to having the DWC Administrative Director Casey Young's involvement in the study per se. The Administrative Director could certainly testify and discuss and be a participant in the study, but this should be a Commission, not a joint, project. The Commission should have the flexibility and independence to channel the project however it wished.

Ms. Baker said that the Commission could conduct a hearing in January 1996 to get public comment on the Permanent Disability System -- problem areas, suggestions, comments. This could be the only issue at a regular Commission meeting or a separate public hearing could be arranged if the Commission members so chose.

Ms. Baker also said that, should the Commission choose to conduct a study of permanent disability, then the involvement of DWC could be considered.

Commissioner Rankin made a motion that the Commission hold a public fact finding hearing on permanent disability as part of its regular meeting scheduled for Los Angeles in January. The motion was seconded Commissioner Vach and passed unanimously.

Commissioner Hlawek's Suggestions

Ms. Baker related that in a letter dated September 22, 1995, Commissioner Hlawek submitted several suggestions for the Commission's consideration.

Commissioner Hlawek recommended that the Commission table the suggestions until he has had a chance discuss the subjects with the other Commission members and then raise the issues again at a future date. Chairman Steinberg suggested that staff do some background work on those issues.

Other Business

Commissioner Vach said he had one item for discussion purposes only at this point. As a result of the 1989 reform and communication problems between DWC and the IMC -- how that structure works, the Disability Rating backlog, and other types of procedural issues, along with those of the WCAB -- it might be appropriate to start thinking about an opportunity to revisit the Administrative and Regulatory function of the workers' compensation system for the long term. The current structure may or may not be appropriate. Commissioner Vach indicated that perhaps he would like to discuss at the next meeting if there is some consensus among the Commissioners that the Commission ought to look at the whole Administrative system.

Chairman Steinberg stated that he thought that was within the Commission's Legislative charge and perhaps it was about time to look at the whole system and make some suggestions as to resolving disputes in some other way such as arbitration. He recommended that it be put on the agenda for discussion in November and said that November might be a good time to clean up a lot of issues, find out where we are in terms of what we've learned, refine exactly what issues we want to look into further and how we're going to go about it.

Public Comments

There were no comments from the public.

Future Meetings

The next meeting of the Commission will be held at 10 am on Thursday, November 9, 1995, in the First Level Auditorium in the Secretary of State's Office Building located at 1500 Eleventh Street (at "O" Street) in Sacramento.

The Commission is not planning to meet during December 1995.

The January 1996 meeting of the Commission will be held in Los Angeles.

Adjournment

A motion to adjourn the meeting was made by Commissioner Rankin, seconded by Commissioner Schwenkmeyer and passed unanimously. The meeting was adjourned at 1:10 pm by Chairman Steinberg.

Attachment: Meeting agenda

Approved: Respectfully submitted,

11/9/95

Robert B. Steinberg, Chairman Date Christine Baker, Executive Officer